

Exhibit 2

AGREEMENT BETWEEN THE COUNTY OF MONO AND [CONTRACTOR] FOR [NAME] PROJECT

Project No. _____

WHEREAS, the County of Mono, a political subdivision of the State of California (hereinafter referred to as “the County”), may have the need for the [service] services of [Corporation]/[Name(s)], [an] individual[s]], doing business as [name], of [City], [State] (hereinafter referred to as “Contractor”), and in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK

This Agreement includes and is subject to the provisions of the adopted Plans and Specifications for the project and the Request for Informal Bids, which documents are referenced and incorporated herein.

Contractor shall furnish the services, perform the work, and provide the associated materials and equipment for the County described in the Scope of Work (Attachment A), attached hereto and by reference incorporated herein. Requests by the County to Contractor to perform under this Agreement shall be made by the Director of the Mono County Department of Public Works, or an authorized representative thereof. Requests to Contractor for services and work to be performed under this Agreement shall be based upon the County’s need for such services or work.

Services and work provided at the County’s request by Contractor under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those to which reference is made in this Agreement the additional contract terms attached hereto as Attachment B, and by reference incorporated herein.

2. TERM

The term of this Agreement shall be from [Month Day, Year], through [Month Day, Year], unless sooner terminated as provided below.

3. CONSIDERATION

A. Compensation.

The County shall pay Contractor in accordance with the “Schedule of Fees” (set forth in Attachment A, attached hereto and by reference incorporated herein) for the services and work described in the Scope of Work (set forth in Attachment A) which are performed by Contractor at the County’s request.

B. Travel and Per Diem.

Unless otherwise agreed by the parties, Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by the County under this Agreement.

C. No Additional Consideration.

Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from the County any additional consideration, compensation, salary, wages, or other type of remuneration for services or work rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. Limit Upon Amount Payable Under Agreement.

The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed **\$X0,000** (hereinafter referred to as “contract limit”). The County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and Payment.

Contractor shall submit to the County, on a monthly basis, an itemized statement of all services and work described in the Scope of Work, which were done at the County’s request. The statement will cover the period from the first day of the preceding month through and including the last day of the preceding month. All statements submitted in request for payment shall identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Invoicing shall be informative but concise regarding services and work performed during that billing period. Upon finding that Contractor has satisfactorily completed the work and performed the services as requested, the County shall make payment to Contractor, excluding any retention, within 30 days of its receipt of the itemized statement. Should the County determine the services or work have not been completed or performed as requested and/or should Contractor produce an incorrect statement, the County shall withhold payment until the services and work are satisfactorily completed or performed and/or the statement is corrected and resubmitted.

F. Retention.

County shall withhold five percent (5%) of the cost of work and materials from each progress payment to Contractor. After fifty percent (50%) project completion, the County may make remaining progress payments in full if it determines that satisfactory progress is being made in the completion of the work.

G. Federal and State Taxes.

(1) Except as provided in subparagraph (2) below, the County will not withhold any federal or state income taxes or social security from any payments made by the County to Contractor under the terms and conditions of this Agreement.

(2) The County shall withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one-thousand fifteen hundred dollars (\$1,500.00).

(3) Except as set forth above, the County has no obligation to withhold any taxes or payments from sums paid by the County to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. The County has no responsibility or liability for payment of Contractor’s taxes or assessments.

(4) The total amounts paid by the County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the State Franchise Tax Board.

4. WORK SCHEDULE

Upon the issuance of a “Notice to Proceed,” Contractor’s obligation is to perform, in a timely manner, those services and work identified in the Scope of Work which are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor, in

arranging its own schedule, will coordinate with the County to ensure that all services and work requested by the County under this Agreement will be performed within the time frame set forth by the County.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS

Contractor must be properly licensed as a contractor from contract award through Contract acceptance as set forth in Public Contract Code section 10164. Contractor must possess a Class License.

Any additional licenses, certificates, or permits required by the federal, state, County, or municipal governments for Contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, contractor's licenses, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide the County, upon request, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and the County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, the County reserves the right to make such determinations for purposes of this Agreement.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, support services, and telephone service as is necessary for Contractor to provide the services and work identified in Attachment A to this Agreement. The County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. The costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

7. COUNTY PROPERTY

A. Personal Property of the County.

Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, uniforms, etc., provided to Contractor by the County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. Contractor will use reasonable care to protect, safeguard, and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor's Work and Services.

Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to the County.

8. WORKERS' COMPENSATION

Contractor shall provide workers' compensation insurance coverage, in the legally required amount, for all Contractor's employees utilized in providing services and work pursuant to this Agreement. By executing a copy of this Agreement, Contractor acknowledges its obligations and responsibilities to its employees under the California Labor Code, and warrants that Contractor has complied and will comply during the term of this Agreement with all provisions of the California Labor Code with regard to its employees. Contractor, at the time of execution of this Agreement, will provide the County with evidence of the required workers' compensation insurance coverage.

9. PUBLIC WORK

A. Determination.

The services and work to be provided by Contractor under this Agreement constitute a public work within the meaning of California Labor Code Sections 1720 and 1720.3. Accordingly, and as required by Section 1771 of the California Labor Code, Contractor and any subcontractor under him, shall pay not less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holiday and overtime work, to all workers employed in the execution of those services and work requested by the County as described in Attachment A of this Agreement. California Labor Code Section 1771 is incorporated herein by this reference, and a copy of that Section is attached to this Agreement as a part of Attachment C.

B. Prevailing Wage Rate.

The general prevailing rate of per diem wages applicable to each class of worker employed in the execution of those services and work under this Agreement has been determined by the Director of the California Department of Industrial Relations (hereinafter referred to as "Director"). Copies of the Director's determination are on file at the Mono County Department of Public Works office, 74 North School Street, Bridgeport, California, and are available to any interested party upon request.

C. Apprentices.

Pursuant to Section 1777.5 of the California Labor Code, properly registered apprentices performing services and work that constitute a public work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. California Labor Code Section 1777.5 is incorporated herein by this reference, and a copy of that section is attached to this contract as a part of Attachment C.

D. Penalty for Non-Payment of Prevailing Wages.

Pursuant to Section 1775 of the California Labor Code, Contractor, and any subcontractor under him, shall, as a penalty to the County, forfeit not more than fifty dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the general rate of per diem wages for the performance of services and work that constitute a public work, as determined by the Director, for the work or craft for which the worker is employed in the performance of services and work provided under this Agreement, except as provided by subdivision (b) of Section 1775 of the California Labor Code. California Labor Code Section 1775 is incorporated herein by this reference, and a copy of that section is attached to this Agreement as a part of Attachment C.

E. Payroll Records.

Pursuant to Section 1776 of the California Labor Code, Contractor, and any subcontractor under him, shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the performance of the services and work requested by the County, as described in the Scope of Work (Attachment A) of this Agreement.

F. Inspection of Payroll Records.

Contractor, and any subcontractor under him, shall comply with each of the additional requirements set forth in California Labor Code Section 1776, regarding: (1) the form of records; (2) the provision of records upon

request to the County, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the California Department of Industrial Relations; and, (3) the inspection of records by the public. California Labor Code Section 1776 is incorporated herein by this reference, and a copy of that section is attached to this Agreement as a part of Attachment C.

G. Posting of Prevailing Wages at Job Site.

Pursuant to California Labor Code Section 1773.2, Contractor shall post at each job site in connection with this Agreement a copy of the Director's determination of the general prevailing rate of per diem wages for each classification of worker required in the execution of those services and work requested by the County, as described in the Scope of Work (Attachment A) of this Agreement that constitute a public work.

H. Hours.

Pursuant to Section 1810 of the California Labor Code, the time of service of any worker employed by Contractor, or by any subcontractor under him, in the performance of services and work requested by the County, as described in the Scope of Work (Attachment A) of this Agreement that constitute a public work, is limited and restricted to eight hours during any one calendar day, and 40 hours during any one calendar week, except as otherwise provided by the California Labor Code.

I. Overtime.

Pursuant to California Labor Code Section 1815, the performance of services and work, as described in the Scope of Work (Attachment A) of this Agreement that constitute a public work by employees of Contractor, or employees of any subcontractor under him, in excess of eight hours per calendar day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per calendar day at not less than one and one-half (1½) times the basic rate of pay. California Labor Code Section 1815 is incorporated herein by this reference, and a copy of that section is attached to this contract as a part of Attachment C.

J. Records of Hours.

Contractor, and any subcontractors under him, shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the performance of the services and work requested by the County, as described in the Scope of Work (Attachment A) of this Agreement. The record shall be kept open at all reasonable hours to the inspection of the County and to the Division of Labor Standards Enforcement as required by Labor Code Section 1812.

K. Penalty for Violation of Work Hours.

Pursuant to California Labor Code Section 1813, Contractor, and any subcontractors under him, shall, as a penalty to the County, forfeit twenty-five dollars (\$25.00) for each worker employed by the respective contractor or subcontractor in the execution of the services and work requested by the County that constitute a public work, as described in the Scope of Work (Attachment A) of this Agreement, for each calendar day during which the worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the California Labor Code. California Labor Code Section 1813 is incorporated herein by this reference, and a copy of that section is attached to this contract as a part of Attachment C.

10. INSURANCE

A. General Liability.

Contractor shall procure, and maintain during the entire term of this Agreement, a policy of general liability insurance which covers all the services and work to be performed by Contractor under this Agreement. Such policy shall have a per occurrence combined single limit coverage of not less than five million dollars (\$5,000,000). Such policy shall not exclude or except from coverage any of the services and work required to be performed by Contractor under this Agreement. The required policy of insurance shall be issued by an insurer authorized to sell such insurance by the State of California, and have at least a "Best's" policyholder's rating of "A" or "A+". Prior to commencing any work under this Agreement, Contractor shall provide the County: 1) a

certificate of insurance documenting evidence of the required coverage; 2) an additional insured endorsement applying to the County of Mono, its agents, officers and employees; and, 3) a notice of cancellation or change of coverage endorsement indicating that the policy will not be modified, terminated, or canceled without 30 days' written notice to the County.

B. Business Vehicle.

Contractor shall procure and maintain in force throughout the duration of this Agreement, a business auto liability insurance policy with minimum coverage levels of one million dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. The coverage shall include all Contractor-owned, non-owned, and hired vehicles employed by the Contractor in the performance of the services and work requested by the County, as described in the Scope of Work Letters issued pursuant to this Agreement. A certificate of insurance shall be provided to the County by Contractor prior to commencing any work under this Agreement. The policy shall maintain a provision prohibiting the cancellation or modification of said policy except upon 30 days' prior written notice to the County.

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions shall be declared by Contractor and must be approved by the County prior to Contractor commencing services and work requested by the County under this Agreement. If possible, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the County, its officials, officers, employees, and volunteers, or Contractor shall provide evidence satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. Subcontractors.

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein for Contractor.

E. Unemployment, Disability, and Liability Insurance

Contractor shall maintain, if so required by law, unemployment, disability and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the Contractor in performing work associated with this Agreement.

11. BOND REQUIREMENTS

Contractor shall furnish and maintain in effect the following bonds: 1) a labor and materials payment bond in an amount equal to one hundred percent (100%) of the contract price; 2) a faithful performance bond in an amount equal to one hundred percent (100%) of the contract price; and, 3) upon project completion and acceptance by the County, a one-year warranty bond in an amount equal to ten percent (10%) of the contract price. The bonds shall comply with the requirements of California Civil Code Section 9554 and must be issued by an "Admitted Surety Insurer." For purposes of this Agreement, an Admitted Surety Insurer means a corporate insurer or inter-insurance exchange to which the California State Insurance Commissioner has issued a certificate of authority to transact surety insurance in California, as defined in Section 105 of the California Insurance Code. Bonds shall be in a form acceptable to the Mono County Counsel. The Attorney-in-Fact (resident agent) who executes the bonds on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge this Power of Attorney as of the date of the execution of the surety bond that it covers. If any surety becomes unacceptable to the County or fails to furnish reports as to its financial condition as requested by the County, Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the work contemplated by this Agreement.

12. STATUS OF CONTRACTOR

All acts of Contractor, its subcontractors, agents, officers, and employees, relating to the performance of this Agreement, shall be performed by independent contractors, and not as agents, officers, or employees of the County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of, or exercise any right or power vested in, the County, except as expressly provided by law or set forth in Attachment A of this Agreement. No agent, officer, or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and the County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor (unless otherwise specified herein) shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to the County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to the County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of the County.

13. DEFENSE AND INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless the County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by Contractor, or Contractor's agents, officers, employees, or subcontractors. Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Contractor's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other cost which is caused in whole or in part by any act or omission of Contractor, its agents, employees, suppliers, or anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

14. RECORDS, AUDIT, AND INSPECTION OF SITE

A. Records.

Contractor shall prepare and maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement and any other records required by the various provisions of this Agreement, and federal, state, County, and municipal law, ordinances, regulations, and directions ("Records"). Contractor shall maintain these records for a minimum of four years from the date of final payment under this Agreement. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, micrographs, or other authentic reproduction of such records.

B. Inspections and Audits.

Any authorized representative of the state or County, shall have access to the Records for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period the Records are to be maintained by Contractor. Further, the County, the state, and the shall have the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

15. NON-DISCRIMINATION

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate, harass, or allow harassment in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, ancestry, national origin, physical disability, medical condition, marital status, age, sexual orientation, sex, and denial of family care leave. Contractor shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12990, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations, which regulations are hereby incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act.

16. TERMINATION

Any termination of the Agreement shall be in accordance with and as set forth in Section 7 of Attachment B of this Agreement.

17. ASSIGNMENT

This is an agreement for the services of Contractor. The County has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of the County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of the County.

19. DEFAULT

If Contractor abandons the work, or fails to proceed with the work and services requested by the County in a timely manner, or fails in any way as required to conduct the work and services as required by the County, the County may declare Contractor in default and terminate this Agreement upon five days' written notice to Contractor. Upon such termination by default, the County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination. Contractor's attention is further directed to provisions related to liquidated damages for untimely performance set forth in Exhibit B to this Agreement.

20. WAIVER OF DEFAULT

Waiver of any default by either party to this Agreement shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph 24 below.

21. CONFIDENTIALITY

Contractor agrees to comply with various provisions of the federal, state, and County laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such privileged, restricted or confidential information and records. Disclosure of such information or records shall be made by Contractor only with the express written consent of the County.

22. CONFLICTS

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement. Contractor agrees to complete and file a conflict of interest statement.

Contractor shall disclose any financial, business, or other relationship with County that may have an impact on the outcome of this Agreement, or any ensuing County construction project. Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing County construction project, which may follow.

23. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

Contractor warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion: to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

24. POST-AGREEMENT COVENANT

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

25. SEVERABILITY

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or County statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

26. FUNDING LIMITATION

The ability of the County to enter into this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, the County has the option to terminate, reduce, or modify this Agreement, or any of its terms within 10 days of its notifying Contractor of the termination, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements (except the requirement of mutual consent) of paragraph 28 below.

27. VENUE

This Agreement shall be governed under the laws of the State of California and venue for any litigation under this Agreement shall be the County of Mono, State of California.

28. AMENDMENT

This Agreement may be extended, modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form, and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

29. NOTICE

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or the County shall be required, or may desire, to make, shall be in writing and may be personally serviced, or sent by prepaid first class mail to the respective parties as follows:

County of Mono:
Department of Public Works
Post Office Box 457
Bridgeport, California 93517

Contractor:
[Contractor]
[Mailing Address]
[City, State Zip]

30. ENTIRE AGREEMENT

This Agreement and its attachments contain the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS AS SET FORTH BELOW.

COUNTY OF MONO:**CONTRACTOR:**

By: _____
Name: _____
Title: County Administrative Officer
Date: _____

By: _____
Name: _____
Title: _____
Firm: [Name(s) dba] [Contractor]
Date: _____
Tax ID: _____

APPROVED AS TO FORM:

County Counsel Date

APPROVED BY RISK MANAGEMENT

Date

ATTACHMENT A

**AGREEMENT BETWEEN THE COUNTY OF MONO
AND [CONTRACTOR] FOR
[NAME] PROJECT**

TERM:

FROM: [Month Day, Year]

TO: [Month Day, Year]

SCOPE OF WORK:

The major work items of this Project are the provision of all labors, supervision, transportation, equipment, materials, tools, supplies, taxes, insurance, bonds, and other items necessary to perform the following work:

Demolition and disposal of materials for specified area to be renovated; complete renovation construction of new ADA compliant 1st floor restrooms (and janitor's room located within restrooms), as per engineered plans and documents; and all electrical, heating and plumbing service upgrades in accordance with the detailed, wet stamped and building-department approved plans provided with the Project Documents.

Tasks performed in completing the project shall follow generally-accepted practices for the construction industry and shall meet the minimum requirements and guidelines established by federal, state, and local agencies. Work tasks shall be coordinated with the Mono County Department of Public Works.

SCHEDULE OF FEES:

See Bid Schedule, attached hereto as Exhibit A1 and incorporated herein by this reference.

The total project cost shall not exceed \$[contract limit], unless otherwise authorized by the County in writing prior to Contractor incurring additional expenses. Upon the County's written approval, authorization to proceed and payment shall be made for any additional items or tasks not initially specified in the scope of work.

WORK SCHEDULE:

All work and services performed by Contractor pursuant to this Agreement shall be completed within ninety (90) calendar days of County's issuance of the Notice to Proceed.

Completion of site improvements shall be specified in a Notice of Completion filed in the Office of the County Recorder by Public Works.

ATTACHMENT B
AGREEMENT BETWEEN THE COUNTY OF MONO
AND [CONTRACTOR] FOR
[NAME] PROJECT

TERM:
FROM: [Month Day, Year]
TO: [Month Day, Year]

ADDITIONAL COUNTY CONTRACT TERMS

See additional contract requirements applicable to construction projects, attached hereto as Exhibit B1 and incorporated by this reference.

EXHIBIT B1
ADDITIONAL CONTRACT PROVISIONS

SECTION 1. GENERAL

1.1 ORDER OF PRECEDENCE OF DOCUMENTS.

In case of conflict between the Project Plans, Technical Specifications or other portions of the Contract Documents, including the Invitation for Bids, Request for Informal Bids, and the Agreement and all its attachments, the County shall determine which provision takes precedence and will be used in lieu of such conflicting portions.

1.2 DEFINITIONS AND TERMS.

Where the following terms are used in the Contract Documents, or in any documents or other instruments pertaining to construction, the intent and meaning shall be interpreted as follows:

- A. **ADMITTED SURETY INSURER (or, SURETY):** A corporate insurer or inter-insurance exchange to which the State Insurance Commissioner has issued a certificate of authority to transact surety insurance in California, as defined in Section 105 of the Insurance Code.
- B. **AWARD:** The acceptance by the County of the successful bidder's proposal.
- C. **CALENDAR DAY:** Unless otherwise specified, days or calendar days means each and every day shown on the calendar, Saturdays, Sundays, and holidays included.
- D. **CHANGE ORDER:** A written order to the Contractor covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and contract time adjustment, if any, for the work affected by such changes. The work, covered by a change order, shall be within the scope of the contract.
- E. **CONTRACT (or, CONTRACT DOCUMENTS):** The written and executed agreement between the County and the Contractor covering the work to be performed. The written agreement consists of all attachments as well as all documents incorporated by reference and shall include, but is not limited to, the Agreement, all Project Documents, Performance Bond, Labor and Materials Payment Bond, any required insurance certificates, any addenda issued to bidders, the Project Plans and Technical Specifications.
- F. **CONTRACTOR:** The person or business entity entering into a contract with the County of Mono for the performance of the work.
- G. **CONTRACT ITEM (or, PAY ITEM):** A specific unit of work for which a price is provided in the Contract.
- H. **CONTRACT TIME:** The number of calendar days or working days, stated in the proposal, allowed for completion of the contract, including authorized time extensions. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar or working days, the contract shall be completed by that date.
- I. **COUNTY:** The County of Mono, a political subdivision of the State of California.
- J. **DEPARTMENT:** The Mono County Department of Public Works.
- K. **EQUIPMENT:** All machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the work.

- L. **EXTRA WORK:** An item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, but which is found by the County to be necessary to complete the work within the intended scope of the contract as previously modified.
- M. **INSPECTOR:** An authorized representative of the County assigned to make all necessary inspections and/or tests of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.
- N. **LABORATORY:** The laboratory or laboratories authorized by the Department to test materials and work involved in the contract.
- O. **LIQUIDATED DAMAGES:** the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a local agency because of the Contractor's failure to complete the contract work within the number of calendar days or workdays specified.
- P. **NOTICE TO PROCEED:** A written notice from the Department to the Contractor to begin the actual contract work on the Project. If applicable, the Notice to Proceed shall state the date on which the contract time begins.
- Q. **PROJECT:** The construction, installation, placement, alteration, or repair of any improvement of any kind, which is required directly or indirectly by the contract.
- R. **SPECIFICATIONS:** A part of the contract documents containing the written directions and requirements for completing the contract work. Standards for specifying materials or testing which are cited in the contract specifications by reference shall have the same force and effect as if physically included in the contract.
- S. **SUPERINTENDENT:** The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the County, and who shall supervise and direct the construction.
- T. **SURVEYOR:** The individual, partnership, firm, or corporation duly authorized by the Contractor to be responsible for verifying placement of the work and acting directly or through an authorized representative.
- U. **UNEXCUSABLE DELAY:** a delay that does not entitle the Contractor to an adjustment of the Contract Sum and does not entitle the Contractor to an adjustment of the Contract Time.
- V. **WORK:** The construction and services required by the Contract, whether completed in whole or partially completed, and includes all labor, materials, equipment, tools, supplies, tax, transportation, and services provided or to be provided by the Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project.
- W. **WORKING DAY:** A working day shall be any day other than a legal holiday, Saturday, or Sunday on which the normal working forces of the Contractor may proceed with regular work for at least 6 hours toward completion of the contract. Unless work is suspended for causes beyond the Contractor's control, Saturdays, Sundays, and holidays on which the Contractor's forces engage in regular work, requiring the presence of an inspector, will be considered working days.

SECTION 2. PERFORMANCE OF WORK

2.1 SITE ACCESS, USE OF PREMISES, AND HOURS OF WORK.

- A. Work shall be limited to the hours between 7:00 am and 8:00 pm Monday through Saturday (no operations allowed on Sundays).

- B. Unless otherwise provided, the Contractor accepts full control of any vehicles, equipment, material, or other property delivered to the site in the performance of services and work for the Project. The Contractor is solely responsible for ensuring the security and protection of such vehicles, equipment, materials, property, and Work. The County accepts no responsibility for the security, safety, or liability of said vehicles, equipment, material, property, or, until final acceptance, the Work. The Contractor understands that the project site is a public area and, as such, there may be vandalism or obstructions, protrusions, and undesirable materials on and under the ground surface that may result in damage to the Contractor's vehicles, equipment, materials, project work, or other property.
- C. Authorized representatives or agents of the County shall have the right to enter the project site at any time during execution of the Work for any purpose that will not unreasonably interfere with the Contractor's use, including, but not limited to, the conduct of its own business, facility inspection, or inspection to ensure compliance with the terms and conditions of the Project.

2.2 OTHER PROJECTS.

The Contractor is advised that other projects may be taking place at the site at the same time as this Project. The Contractor will make every effort to coordinate his work with that of other contractors.

2.3 PROTECTION OF PROPERTY.

The Contractor shall take all reasonable precautions to preserve and protect all on-site and surrounding public and private property to prevent damage of all kinds to existing structures, signs, fences, gates, roads, drainage facilities, monitoring wells, equipment, and the environment arising from the execution of this Contract, unless otherwise called for on Project Plans. In addition, the Contractor shall be responsible for the preservation and protection of all land monuments and property markers.

In addition to its obligations pursuant to the Agreement to defend, indemnify, and hold the County harmless, the Contractor shall replace, repair, and/or be responsible for any damage or injury to property of any character during the prosecution of the Work, resulting from any act, omission, neglect, or misconduct in the Contractor's manner or method of executing the Work, or at any time due to defective work or materials, and said responsibility shall not be released until the Project is completed and accepted. Repairs or replacement required as a result of such damage shall be performed to the County's satisfaction and at no additional cost to the County.

It is the Contractor's responsibility to identify and document any property or site damage that exists prior to the start of construction. If undocumented damage is discovered by the County that could have been caused as a result of the Contractor's presence, it will be the Contractor's responsibility to repair the damage to the County's satisfaction without cost to the County. If the Contractor does not repair the damage to the County's satisfaction, the County has the right, after 48 hours of written notification, to repair the damage and charge the Contractor for all expenses associated with the repair.

The Contractor shall be responsible for the safety of all persons at or near the project site as it pertains to the Project. The Contractor shall provide signage, temporary protective fencing, or covering over any open trenching, excavation, or other hazardous situation arising from the execution of the Work, to keep out unauthorized persons, at no additional cost to the County.

2.4 ENVIRONMENTAL PROTECTION.

The Contractor shall comply with all federal, state, and local laws and regulations controlling pollution of the environment. All necessary precautions shall be taken to prevent pollution of streams, drainage channels, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter. Any fuel or lubricants stored on-site shall be in appropriate and secure containers provided with secondary containment.

2.5 REMOVAL OF ASBESTOS AND HAZARDOUS SUBSTANCES.

Should the Contractor encounter materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe, and shall immediately cease work in the affected area and immediately report the condition to the Engineer in writing.

In accordance with Section 25914.1 of the Health and Safety Code, all such removal of asbestos or hazardous substances, including any exploratory work to identify and determine the extent of such asbestos or hazardous substance, will be performed by separate contract.

2.6 ARCHAEOLOGICAL AND HISTORICAL FINDINGS.

Should the Contractor encounter, during its operations, any building, part of a building, structure, or object which is incongruous with its surroundings, the Contractor shall immediately cease operations in that location and notify the Engineer. The Engineer will immediately investigate the Contractor's finding and will direct the Contractor to either resume its operations or to suspend operations as directed.

Should the Engineer order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such shall be covered by an appropriate contract modification (change order or supplemental agreement).

SECTION 3. RESERVED**SECTION 4. SUBCONTRACTORS****4.1 SUBCONTRACTING.**

No subcontract releases the Contractor from the contract or relieves the Contractor of its responsibility for a subcontractor's work.

If the Contractor violates Public Contract Code § 4100 et seq., the County of Mono may exercise the remedies provided under Public Contract Code § 4110. The County of Mono may refer the violation to the Contractors State License Board as provided under Public Contract Code § 4111.

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the Agreement and all contract documents.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

The Contractor shall submit copies of subcontracts upon request by the Facilities Manager. Before subcontracted work starts, the Contractor shall submit a Subcontracting Request form to the Facilities Manager. The Contractor shall not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations web site at: <http://www.dir.ca.gov/dlse/debar.html>

Upon request by the County, the Contractor shall immediately remove and not again use a subcontractor who fails to prosecute the Work satisfactorily.

Payment for subcontracted work involved will be withheld from progress payments due or to become due, until correction is made. Failure to comply may result in termination of the contract.

4.2 PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS.

A prime contractor or subcontractor shall pay any subcontractor not later than 10 days from receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the County's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

SECTION 5. PROJECT IMPLEMENTATION**5.1 PRE-CONSTRUCTION CONFERENCE.**

Prior to Contractor mobilization, a pre-construction conference will be held at a location, date, and time to be determined by the County for the purpose of discussing with the Contractor the scope of work, Project Plans, Technical Specifications, existing conditions, coordination with disposal site operations, equipment and material storage locations, materials testing and construction quality assurance, and all essential matters pertaining to the prosecution of and the satisfactory completion of the Project as required. The Contractor's representative at this conference shall include all major superintendents for the work and may include subcontractors.

5.2 PROSECUTION AND PROGRESS.

The Contractor shall submit a progress schedule for the Facilities Manager's approval within 10 calendar days after the date of the Notice of Award. The Contractor's progress schedule, when approved by the Facilities Manager, may be used to establish major construction operations and to check on the progress of the Work. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the Project in accordance with and within the time set forth in the Contract Documents.

If, in the sole judgment of the Facilities Manager, the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the Facilities Manager's request, submit a revised schedule for completion of the Work within the contract time and modify its operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the prosecution of the Work be discontinued for any reason, the Contractor shall notify the Facilities Manager at least 24 hours in advance of resuming operations.

SECTION 6. PROJECT ADMINISTRATION**6.1 OMITTED ITEMS.**

The County may, if in its best interest, omit from the Work any Contract Item. Such omission shall not invalidate any other Contract provision or requirement. Should a Contract Item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid for all work performed toward completion of such an item prior to the date of the order to omit such an item.

6.2 CONTRACTOR REPRESENTATION.

The County will not recognize any subcontractor on the work. The Contractor shall at all times when work is in progress be represented in person by either a qualified, competent Superintendent or by another designated, qualified, competent representative who is duly authorized to receive and execute orders of the Facilities Manager. The Superintendent shall be satisfactory to the County and shall not be changed except with the express written consent of the County unless the Superintendent proves to be unsatisfactory to the Contractor or ceases to be in its employ.

All communications given to the Superintendent or other authorized representative shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. An authorized representative of the Contractor shall be available for emergency telephone communications from the County on a 24-hour, seven days per week basis during the performance of the Work.

6.3 CONTRACTOR PERSONNEL.

The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him or her. The Contractor shall ensure that all workers have sufficient skill and experience necessary to properly perform the work assigned to them and that workmanship shall be of the best trade practice, regardless of the quality of materials. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily. The Contractor shall provide, at all times, sufficient and competent labor to carry on the work properly and ensure completion of each part in accordance with the Project Plans, the Agreement, the QAP Plan, and the approved schedule.

An employee of the Contractor or subcontractor who is deemed by the County to be incompetent, disorderly, or otherwise objectionable shall be promptly removed by the Contractor and not reemployed on the Work.

6.4 METHODS AND EQUIPMENT.

The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the Work to full completion in the manner and time required by the Contract Documents.

All equipment proposed to be used on the Work shall be of sufficient size and in such mechanical condition as to meet requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to previously-completed work, adjacent property, or existing facilities will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the Work are not prescribed in the Contract Documents, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the Contract Documents.

6.5 PARTIAL PAYMENTS.

Unless otherwise agreed by the County, no partial payment will be made for any materials on hand which have been furnished but not incorporated into the work.

6.6 FINAL ACCEPTANCE.

Upon due notice from the Contractor of presumptive completion of the entire Project, the County will make an inspection. If all construction provided for and contemplated by the Contract is found to be completed in accordance with the Contract Documents, such inspection shall constitute the final inspection. The County shall notify the Contractor in writing of final acceptance as of the date of the final inspection.

If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the County will give the Contractor the necessary instructions for correction of same and the Contractor shall

immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided the work has been satisfactorily completed. In such event, the County will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

The completion of the contract will be accepted and Notice of Completion recorded by the County only when the entire contract is completed satisfactorily to the County.

6.7 CLAIMS FOR ADJUSTMENT AND DISPUTES.

If for any reason the Contractor deems that it is due additional compensation for work or materials not clearly provided for in the Contract Documents or previously authorized as extra work, the Contractor shall notify the County in writing of its intention to claim such additional compensation 24 hours before beginning the work on which the claim is based. If such notification is not given or the County is not afforded a proper opportunity by the Contractor to keep strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the Facilities Manager has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 14 calendar days, submit its written claim to the County for consideration in accordance with local laws or ordinances. Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute final payment based on differences in measurements or computations.

6.8 FORCE MAJEURE.

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

6.10 WARRANTY AND GUARANTEE.

The Contractor warrants to the County that all materials furnished under this Contract shall be new unless otherwise specified and that all Work, including without limitation all materials, will be of good quality, free from faults and defects and in conformance with contract requirements. Any work not so conforming to these standards may be considered defective. The obligations of the Contractor in this subsection shall be in addition to, and not in limitation of, any obligations imposed upon it by those guarantees required by the contract or otherwise prescribed by law.

Neither the recordation of a Notice of Completion, nor the final certification or payment, nor any provision of the Contract or partial or entire use or occupancy of the premises by the County shall constitute an acceptance of the Work not performed in accordance with the Contract or relieve the Contractor of liability with respect to any express warranties or responsibility for faulty materials or workmanship.

The Contractor agrees that all work and materials provided under this contract are guaranteed for a period of one year against defects of any kind or nature and that any defective work or materials resulting from the Contractor's negligence will be repaired or replaced by the Contractor at its own expense immediately upon notification by the County. The Contractor shall furnish a warranty bond in the amount of 10 percent of the contract price as provided for and meeting the requirements specified in the Agreement. The warranty bond shall be furnished and approved prior to final payment and release and shall remain in

effect for the duration of the guarantee period to insure the repair or replacement of defective work or materials. The one-year guarantee period shall commence on the day of recordation of the Notice of Completion.

The County will give notice of observed defects with reasonable promptness. The County is authorized to make such repairs and charge the Contractor the actual costs of such necessary labor and material, if, within 14 calendar days after mailing a notice in writing to the Contractor or its agent, the Contractor neglects to make or undertake with due diligence the aforesaid repairs; provided, however, that in the case of an emergency where, in the opinion of the County, delay would cause hazard to health or serious loss or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.

If after installation and acceptance, the Work provided for under this Contract proves to be unsatisfactory to the County, the County shall have the right to use the Work until it can, without damage to the County, be taken out of service for correction or replacement. Such period of use of the defective Work pending correction or replacement shall in no way decrease the guarantee period.

Nothing in this section shall be construed to limit, relieve or release the Contractor's, subcontractor's, and supplier's liability to the County for damages sustained as the result of latent defects in the Work caused by the negligence of their respective agents, employees or subcontractors.

SECTION 7: TERMINATION

7.1 TERMINATION BY CONTRACTOR.

Subject to below Section 7.2, below, the Contractor shall have the right to terminate the Contract only upon the occurrence of one of the following:

1. Provided that County has not commenced reasonable action to remove any order of a court within the 90 day period, the Work is stopped for 90 consecutive days, through no act or fault of Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
2. The County fails to perform any material obligation under the Contract Documents and fails to cure such default within 30 days, or County has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from Contractor stating the nature of such default(s).

Upon occurrence of one of the events listed above, the Contractor may, upon 10 days additional notice to County, and provided that the condition giving rise to Contractor's right to terminate is continuing, terminate the Contract.

Upon termination by Contractor, County will pay to Contractor the sum determined by Section 7.3. Such payment will be the sole and exclusive remedy to which Contractor is entitled in the event of termination of the Contract by Contractor pursuant to this section; and Contractor will be entitled to no other compensation or damages and expressly waives the same.

7.2 TERMINATION BY COUNTY FOR CAUSE.

The County will have the right to terminate the Contract for cause or the Contractor's right to perform the Contract for cause at any time after the occurrence of any of the following events:

1. Contractor becomes insolvent or files for relief under the bankruptcy laws of the United States.

2. Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
3. A receiver is appointed to take charge of Contractor's property.
4. The commencement or completion of any Work activity on the critical path is more than 6 days behind the date set forth in the Contract Schedule for such Work activity as a result of an Inexcusable Delay.
5. Contractor abandons the Work.

Upon the occurrence of any of the following events and subject to the clause entitled "Force Majeure", the County will have the right to terminate the Contract for cause or the Contractor's right to perform the Contract for cause if the Contractor fails to promptly commence to cure such default and diligently prosecute such cure within 5 days after notice from the County, or within such longer period of time as is reasonably necessary to complete such cure:

1. Contractor persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
2. Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from County.
3. Contractor disregards Applicable Code Requirements.
4. Contractor persistently or materially fails to execute the Work in accordance with the Contract Documents.
5. Contractor is in default of any other material obligation under the Contract Documents.
6. Contractor persistently or materially fails to comply with applicable safety requirements.

Upon any of the occurrences referred to above the County may, at its election and by notice to the Contractor, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Contractor; accept the assignment of any or all of the subcontracts; and then complete the Work by any method County may deem expedient. If requested by County, Contractor shall remove any part or all of Contractor's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within 7 days of such request; and if Contractor fails to do so, County may remove or store, and after 90 days sell, any of the same at Contractor's expense.

If the Contract or Contractor's right to perform is terminated by the County as provided in this section, the Contractor shall not be entitled to receive any further payment until the expiration of 35 days after Final Completion and acceptance of all Work by County.

If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for County staff time, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to Contractor. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Contractor shall pay such excess to County.

No termination or action taken by the County after termination shall prejudice any other rights or remedies of the County provided by law or by the Contract Documents upon such termination; and the County may proceed against the Contractor to recover all losses suffered by County.

Termination of the Contract does not relieve the surety of its obligation for any just claims arising out of the work performed.

7.3 TERMINATION BY COUNTY FOR CONVENIENCE.

The County may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to Contractor. Upon such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the Contractor, the County shall pay the Contractor in accordance with this Section, below.

Upon receipt of notice of termination under this Section, Contractor shall, unless the notice directs otherwise, do the following:

1. Immediately discontinue the Work to the extent specified in the notice.
2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.
3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
4. Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

Upon such termination, the obligations of the Contract shall continue as the portion of Work already performed and, subject to Contractor's obligations under Section 7.2 above, as to bona fide obligations assumed by the Contractor prior to the date of termination. However, termination of the Contract does not relieve the surety of its obligation for any just claims arising out of the work performed.

Upon such termination, the County shall pay to Contractor the sum of the following:

1. The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.
2. Plus previously unpaid costs of any items delivered to the Project Site that were fabricated for subsequent incorporation in the Work.
3. Plus any proven losses with respect to materials and equipment directly resulting from such termination.
4. Plus reasonable demobilization costs.
5. Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.

The above payment shall be the sole and exclusive remedy to which the Contractor is entitled in the event of termination of the Contract by the County pursuant to this Section; and the Contractor will be entitled to no other compensation or damages and expressly waives same.

SECTION 8. MATERIALS**8.1 MANUFACTURER'S SPECIFICATIONS AND RECOMMENDATIONS.**

Wherever, in the Contract Documents, a particular brand or make of item is specified, the Contractor shall comply strictly with the specifications and recommendations of that manufacturer as to the installation and/or application of that particular item. This requirement shall be met with respect to the specifications and recommendations of the manufacturer of an "or equal" item approved by the County and installed or applied by Contractor.

8.2 REFERENCE TO SPECIFICATIONS AND TRADE NAMES.

Where American Society for Testing Materials (ASTM) or other specifications or standards are mentioned, it shall be understood that the materials or methods mentioned therewith shall conform to all requirements of the same that are in effect on the date of bid submission.

Where the trade name of a product or the name of a product or the name of a manufacturer appears, it shall be understood to specify the product so identified or its "Approved Equal." The words "Or Equal" or "Approved Equal" shall mean equal in the opinion of, and approval by, the Engineer. Any substitutions for products or manufacturers mentioned in the Contract Documents shall be submitted by the Contractor to the County for approval within 14 calendar days following the Award of Contract.

8.3 STORAGE OF MATERIALS.

Materials shall be stored as to assure the preservation of their quality and fitness for the Work. Stored materials, even if approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located so as to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the County and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the County. Private property shall not be used for storage purposes without written permission of the owner or lessee of the property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor shall furnish the County a copy of the owner's or lessee's permission. All storage sites on private or County property shall be restored to their original condition by the Contractor at its entire expense, except as otherwise agreed to in writing by the County.

SECTION 9. CONSTRUCTION DETAILS

9.1 ORDER OF WORK.

The location where Project improvements are to be constructed may be exposed to public traffic. In that event, the Contractor shall conduct operations so that conditions do not exist that would create a nuisance, hazard, or other damage. Appropriate safety measures, warning devices and protective devices shall be implemented to protect all workers, the traveling public, and the work.

9.2 SANITARY, HEALTH, AND SAFETY PROVISIONS.

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of the State and local Health Department, or of other bodies or tribunals having jurisdiction.

Attention is directed to federal, State, and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous to that worker's health or safety.

The County shall have no responsibility for job site safety. The Contractor and his subcontractors must execute their daily work in accordance with the latest edition of the Occupational Safety and Health Administration (OSHA).

9.3 CONSTRUCTION SITE NUISANCE.

The Contractor shall maintain preventative controls of blowing dust, noise, and other nuisances from construction work. No dogs or other animals are allowed within the project limits.

9.4 PUBLIC CONVENIENCE AND SAFETY.

The Contractor shall provide temporary protective fencing, barriers, and/or covering over any open trenching or excavation arising from the execution of this Contract, to keep out unauthorized persons, at no additional cost to the County. The cost for providing signage, barriers, or any other items associated

with public convenience and safety shall be the sole responsibility of the Contractor and no additional payment will be allowed therefor.

9.6 PERMITS.

The Contractor shall give all notices as required and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn and specified. If the Contractor observes that the Project Plans and Technical Specifications are at variance therewith, the Contractor shall notify the County promptly in writing, of any necessary changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the County, the Contractor shall bear all costs arising therefrom. Copies of permits shall be furnished to the County.

9.7 CONSTRUCTION LAYOUT AND STAKES.

The Contractor shall engage the services of a State of California licensed Professional Land Surveyor to perform construction layout. All staking on the project shall be performed by, or under, the direct supervision of a Professional Land Surveyor. The Contractor will be responsible for establishing and maintaining all survey controls and other layout that may be required for construction of the work.

9.8 TESTING.

Aside from materials testing and certifications required from the Contractor in the Contract Documents, the County will provide testing services for installed work.

9.9 CONTRACTOR QUALITY CONTROL.

The Contractor shall be responsible for the quality of all materials entering into the work and of the work performed. The County and Engineer shall establish, maintain, and modify if needed, a quality control system that will provide assurance that materials and completed work conform to contract requirements.

9.10 INSPECTION OF THE WORK.

All materials and each part or detail of the work shall be subject to inspection by the County. The County shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the County requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.

Any work done or materials used without supervision or inspection by an authorized representative of the County may be ordered removed and replaced at the Contractor's expense unless the County's representative failed to inspect after having been given reasonable notice in writing that the work was to be performed.

9.11 RETEST OF WORK.

When, as provided for in the Contract Documents, the County or Contractor performs sampling and test of the work and the tests show a failure to meet the requirements the Contract Documents, the expense of re-testing, after re-working or substitution by the Contractor, will be at the expense of the Contractor, and such costs will be deducted from any amounts due to the Contractor.

9.12 MAINTENANCE DURING CONSTRUCTION.

The Contractor shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective Work prosecuted day by day, with adequate equipment and forces so that the work is maintained in satisfactory condition at all times. All costs of maintenance work before the project is accepted shall be included in the unit prices bid on the various Contract Items, and the Contractor will not be paid an additional amount for such work.

Should the Contractor at any time fail to maintain the work as provided herein, the County shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the exigency that exists. Should the Contractor fail to respond to the County's notification, the County may suspend any work necessary for the County to correct such unsatisfactory maintenance condition, depending on the exigency that exists. Any maintenance cost incurred by the County shall be deducted from monies due or to become due the Contractor.

SECTION 10. OPERATIONS AND SAFETY**10.1 TEMPORARY CONTRACTOR FACILITIES.**

Unless public restroom facilities are available at the project site, the Contractor shall provide chemical toilets for use by contractor and subcontractor employees. Chemical toilets shall be regularly serviced to maintain a clean and odorless facility.

The Contractor's storage area shall be determined at the pre-construction conference. The Contractor shall secure at his own expense any area required for storage of equipment or materials, or for other supplies.

The County will not be responsible for providing telephone, electrical, water, sewer, or any other temporary utility for use by the Contractor.

The Contractor shall remove all equipment, materials, and rubbish from the work areas which it occupies and shall leave the areas in a clean, safe and presentable condition.

10.2 BORROW, DISPOSAL AND MATERIAL SITES.

The operation of any borrow or disposal sites used by the Contractor to produce or dispose of materials for this project shall comply with the requirements of the Contract Documents. All provisions for water pollution, air pollution, and sound control that apply within the limits of the contract shall apply to all borrow or disposal sites utilized by the Contractor.

Full compensation for complying with the requirements for borrow, disposal and material sites in this section shall be considered as included in the contract prices paid for the items of work which require the use of the sites and no additional compensation will be allowed therefor.

10.3 WATER SUPPLY.

The Contractor is responsible for making its own arrangements to obtain an adequate supply of water required for the proper construction of this project in accordance with the Contract Documents. The Contractor shall be responsible for all costs associated with obtaining construction water. If the Contractor uses non-potable water on the project, the sources and discharge of non-potable water shall meet the California Department of Health Services water reclamation criteria and the requirements of the Lahontan Regional Water Quality Control Board.

If used, non-potable water shall not be conveyed in tanks or drain pipes which will be used to convey potable water. There shall be no connection between non-potable water supplies and potable water supplies. Non-potable water supply, tanks, pipes, and other conveyances of non-potable water shall be labeled, "NON-POTABLE WATER—DO NOT DRINK."

Full compensation for developing a water supply, loading, and transporting water, labeling as specified, and dust control and moisture-conditioning on the project site shall be considered included in the prices paid for the various Contract Items of work involving the use of water and no additional compensation will be allowed therefor.

The Contractor shall, whenever possible and not in conflict with the above requirements, minimize the use of water during construction of the project. Watering equipment shall be kept in good working order; water leaks shall be repaired promptly; and washing of equipment, except when necessary for safety or for the protection of equipment, shall be discouraged.

When ordered by the County, a dust palliative approved by County shall be used to control dust on this project. No direct payment shall be made for dust palliative. Payment for dust palliative shall be included in the cost of other work.

9.4 EXISTING FACILITIES.

The Contractor shall be responsible for protecting all existing structures and facilities from damage as a result of the Contractor's activities. Any damage resulting from the Contractor's operations shall be repaired immediately, at the Contractor's expense.

SECTION 11. PROGRESS MEETINGS

11.1 WEEKLY PROGRESS MEETINGS.

The County will conduct Progress Meetings at regularly scheduled times convenient for all parties involved. Progress Meetings are in addition to specific meetings held for other purposes, such as coordination meetings. Discussions will address administrative and technical issues of concern, determining resolutions, and development of deadlines for resolution within allowable time frames.

11.2 ATTENDEES.

As may be required by the County, in addition to representatives of Mono County and the Contractor, each subcontractor, supplier or other entity concerned with current progress or involved in planning, coordination or performance of future activities shall be represented at these meetings by individuals directly involved with the Contract and authorized to conclude matters relating to progress.

SECTION 12: DIFFERING SITE CONDITIONS

12.1 CONTRACTOR'S NOTIFICATION

The Contractor shall promptly notify the County if it finds either of the following conditions:

1. Physical conditions differing materially from either of the following:
 - Contract documents
 - Job site examination
2. Physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract

Contractor shall include details explaining the information it relied on and the material differences it discovered.

If Contractor fails to promptly notify the County, it waives the differing site condition claim for the period between discovery of the differing site condition and notification to the County.

If Contractor disturbs the site after discovery and before the County's investigation, it waives the differing site condition claim.

12.2 COUNTY'S INVESTIGATION AND DECISION

Upon notification by the Contractor, the County will investigate the job site conditions and:

1. Notify Contractor whether to resume affected work
2. Decide whether the condition differs materially and is cause for an adjustment of time, payment, or both.

SECTION 13: WORK SCHEDULE AND LIQUIDATED DAMAGES

13.1 BEGINNING OF WORK AND TIME OF COMPLETION

The Contractor shall begin work on the date provided in the Notice to Proceed issued by the Public Works Director or his designee.

This work shall be diligently prosecuted to completion before the expiration of **90 CALENDAR DAYS** beginning on the date set forth in the Notice to Proceed.

13.2 Liquidated Damages

The County expects the Contractor to perform its responsibilities and tasks as specified in these Contract Documents. The expectation is reasonable, within normally acceptable business practices, and in the best interest of the County and its residents. The Contractor acknowledges that the County, in entering this Agreement, has considered and relied on the Contractor's representations as to its ability and commitment to quality and timeliness of service; that the provision of reliable and timely services is of utmost importance to the County; and that the County will suffer damages if the Contractor fails to fulfill its obligations under the Contract. The Contractor acknowledges that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages that the County will suffer and that liquidated or actual damages attach and will be payable from any funds due to the Contractor.

The liquidated damages described below, represent the projected financial loss and expenditures that may occur as a result of Contractor non-performance, including financial loss as a result of project delays. The County and Contractor agree that the liquidated damages provided for herein do not represent a penalty; rather, the liquidated damages represent a good faith effort by the County and Contractor to establish a reasonable estimate of the damages that will be incurred by the County in the circumstances described, considering all of the circumstances existing on the date of contract award, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient.

This provision for liquidated damages for delay shall in no manner affect the County's right to terminate the Contract or the Contractor's right to perform the Contract as provided elsewhere in the Contract Documents. The County's exercise of the right to terminate shall not release the Contractor from its obligation to pay said liquidated damages in the amount set out below.

The Contractor shall pay to the County the sum of **\$100 per day**, as liquidated damages, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

13.3 Breach

If conditions of non-performance justifying the imposition of liquidated damages continue, they may amount to a material breach for which the County may pursue recovery of actual losses resulting from the Contractor's failure to perform, and the County expressly reserves this right.

The County shall notify the Contractor in writing, for any default specified herein, and such liquidated damages shall be paid by the Contractor within thirty (30) calendar days of the County's notice. The Contractor's failure to pay the assessed liquidated damages within the designated time frame may be deemed by the County as a breach of contract.

SECTION 14. PROJECT CLOSEOUT

14.1 RECORD DRAWINGS.

The Contractor shall maintain a set of accurate record drawings during the course of the project. Any project work completed that varies from the plans as issued shall be legibly noted on the Record Drawings in red ink. Both text and line work shall be used to reflect the changes. At the completion of the project and prior to final payment, the record drawings shall be delivered to the County and, upon receipt, be maintained as the property of the County.

ATTACHMENT C

**AGREEMENT BETWEEN THE COUNTY OF MONO
AND [CONTRACTOR] FOR
[NAME] PROJECT**

TERM:

FROM: [Month Day, Year]

TO: [Month Day, Year]

CALIFORNIA LABOR CODE PROVISIONS

Copies of referenced California Labor Code sections (1771, 1775, 1776, 1777.5, 1813, & 1815), presented as Exhibit C1, are attached hereto and incorporated herein.

EXHIBIT C1

CALIFORNIA LABOR CODE:
Sections 1771, 1775, 1776, 1777.5, 1813, and 1815

§ 1771. Payment of general prevailing rate

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

§ 1775. Penalties for violations

- (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.
- (2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:
 - (i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
 - (ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.
- (B) (i) The penalty may not be less than ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
- (ii) The penalty may not be less than twenty dollars (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
- (iii) The penalty may not be less than thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.
- (C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

- (D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.
 - (E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.
- (b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:
- (1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - (2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
 - (3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
 - (4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.
- (c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

§ 1776. Payroll records; retention; noncompliance; penalties; rules and regulations

- (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
- (1) The information contained in the payroll record is true and correct.
 - (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.
- (b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:
- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

- (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.
- (c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).
- (d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.
- (e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.
- (f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.
- (g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- (h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

- (i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

§ 1777.5. Employment of apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions

- (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.
- (b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.
- (c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:
 - (1) The apprenticeship standards and apprentice agreements under which he or she is training.
 - (2) The rules and regulations of the California Apprenticeship Council.
- (d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).
- (e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.
- (f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

- (g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.
- (h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.
- (i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).
- (j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.
- (k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:
 - (1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.
 - (2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.
 - (3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.
 - (4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.
- (l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.
- (m)(1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to

- an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.
- (2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:
- (A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.
- (B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.
- (C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.
- (3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.
- (n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.
- (o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).
- (p) All decisions of an apprenticeship program under this section are subject to Section 3081.

§ 1813. Forfeiture for violations; contract stipulation; report of violations

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

§ 1815. Overtime

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay